

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA, §
§
Plaintiff, § § Criminal No. 4:95-CR-172-D
VS. §
§
TERRY LEE OWENS, §
§
Defendant. §

MEMORANDUM

Defendant Terry Lee Owens (“Owens”) moves for a sentence reduction under 18 U.S.C. § 3582(c)(2), based on an amendment to U.S.S.G. § 1B1.10(c), which made Amendment 706 to the United States Sentencing Guidelines, as amended by Amendment 711, retroactive. The government does not oppose the motion. By order filed today, the court has reduced Owens’ sentence. The court explains its reasoning in this memorandum.

I

Under 18 U.S.C. § 3582(c)(2), “the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.”

Under U.S.S.G. § 1B1.10(a)(1), “[a]s required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant’s term of imprisonment shall be consistent with this policy statement.”

U.S.S.G. § 1B1.10(b)(1) provides:

In General.—In determining whether, and to what extent, a reduction in the defendant’s term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (c) had been in effect at the time the defendant

was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.

U.S. Sentencing Guidelines Manual § 1B1.10(b)(1) (Supp. 2008).

Application note 1(b) to U.S.S.G. § 1B1.10 specifies various factors for the court to consider:

(i) *In General*.—Consistent with 18 U.S.C. § 3582(c)(2), the court shall consider the factors set forth in 18 U.S.C. § 3553(a) in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(ii) *Public Safety Consideration*.—The court shall consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment in determining: (I) whether such a reduction is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(iii) *Post-Sentencing Conduct*.—The court may consider post-sentencing conduct of the defendant that occurred after imposition of the original term of imprisonment in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

U.S. Sentencing Guidelines Manual § 1B1.10 cmt. n.1(B) (Supp. 2008) (italics omitted).

Additionally, U.S.S.G. § 1B1.10(b)(2) imposes limitations and a prohibition on the extent of a sentence reduction:

(A) *In General*.—Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.

(B) *Exception*.—If the original term of imprisonment imposed was less than the term of imprisonment provided by the guideline range

applicable to the defendant at the time of sentencing, a reduction comparably less than the amended guideline range determined under subdivision (1) of this subsection may be appropriate. However, if the original term of imprisonment constituted a non-guideline sentence determined pursuant to 18 U.S.C. § 3553(a) and *United States v. Booker*, 543 U.S. 220 (2005), a further reduction generally would not be appropriate.

(C) *Prohibition.*—In no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.

U.S. Sentencing Guidelines Manual § 1B1.10(b)(2) (Supp. 2008).

II

When Owens was sentenced by Judge McBrydge, his total offense level was 37. Based on a criminal history category of III, this resulted in a guideline range of 262 to 327 months. The court sentenced him to 294 months' imprisonment, the midpoint in the range. As a result of Amendment 706, Owens' total offense level is now 35, resulting in a guideline range of 210 to 262 months. Having considered the factors specified in 18 U.S.C. § 3553(a), the provisions of U.S.S.G. § 1B1.10(b)(1) and (2), and the factors for consideration contained in Application Note 1(B)(i)-(iii), the court concludes that Owens' sentence should be reduced to 236 months' imprisonment, which is the midpoint of the new range.

April 28, 2008.



SIDNEY A. FITZWATER
CHIEF JUDGE